

R EMARKS

Claims 1–21 are pending in the application, with claims 1, 12, 19 and 20 being independent.

Claims 1–20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer, U.S. Publication No. 2003/0214930 A1 (hereinafter “Fischer”) in view of Dapper, U.S. Publication No. 2002/015950 A1 (hereinafter “Dapper”).

Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of Dapper, further in view of Zehavi (U.S. Patent No. 5,757,76, hereinafter Zehavi).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or simply is clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., simply to avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, because a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an

independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 35 U.S.C. §103

Claims 1–20

Claims 1–20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of Dapper. The rejection is traversed.

The Office Action fails to establish a *prima facie* case of obviousness, because the suggested combination of the references does not teach all of the elements of each of the independent claims. According to MPEP §2143, to establish a *prima facie* case of obviousness under §103, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). More specifically, independent claim 1 is amended to more clearly the time alignment process. Contrary to the Examiner's suggestion, the primary reference does not appear to teach at least the following feature recited in the claims:

"time aligning the data packets in each of the groups associated with a common communication device according to timing information data packets header for configuring a receive timer; and
receiving a plurality of data packets in parallel and applying at least one pre-selected orthogonal function to each of the received packets."(emphasis added).

Rather, the reference describes receiving a packet, constructing an aggregated fragment acknowledgement frame (AFAF), and sending it back. Accordingly, even assuming that AFAF provides for determining a device for which the packet is intended, no pre-determined time period is used. Rather, AFAFs are sent back almost immediately.

Thus, it is shown that claim 1 has been erroneously rejected under 35 U.S.C. §103(a) because there are missing claimed features not taught/suggested by the cited references.

Further, in rejecting claim 1, the Examiner failed to establish a *prima facie* case of obviousness, because there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l v. Teleflex, Inc.* 127 S. Ct. 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). In an attempt to articulate a motivation, the Examiner makes the following statement:

“Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply orthogonally encoding technique taught by Dapper to the communication device disclosed by Fisher in order to achieve more efficiently use network resources and to provide “real time” results.” (See Office Action page 5).

The Examiner attempted to provide a reason to combine the prior art in the fashion claimed, because the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement. However, the Examiner articulates the result of modifying the reference, to wit, in order to achieve more efficiently use network resources and to provide “real time” results, but fails to provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness (i.e., fails to explicate why an artisan of ordinary skill in the art would be motivated to perform the modifications). Accordingly, the Examiner’s burden in making factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966) is not met. The Examiner’s conclusory statement is unaccompanied by evidence or reasoning and is entirely inadequate to support the rejection. *In re Sichert*, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977). Accordingly, the Examiner fails to meet the requirements set forth in MPEP §706.02(j).

Therefore, the combination of Fischer and Dapper does not teach or suggest all of the elements of Applicants’ claim 1, and thus, a *prima facie* case of obviousness with respect to claim 1 has not been established. Independent claims 12, 19, and 20 recite at least elements similar to the elements discussed above. Accordingly, similar to claim 1 and for at least the reasons discussed above, a *prima facie* case of obviousness with respect to claims 12, 19, and 20 has not been established.

Accordingly, the combination of Fischer and Dapper does not teach or suggest all of the elements of Applicants’ amended claims 12, 19, and 20, and thus, a *prima facie*

case of obviousness with respect to amended claims 12, 19, and 20 has not been established. Because all of the dependent claims depending from the independent claims include all of the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable under 35 U.S.C. §103(a) over Fischer in view of Dapper. Therefore, claims 2 – 11 and 13 – 18 are allowable under 35 U.S.C. §103(a) over Fischer in view of Dapper. The Examiner is respectfully requested to withdraw the rejection.

Claim 21

Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer in view of Dapper, further in view of Zehavi. The rejection is traversed.

This ground of rejection applies only to a dependent claim and is predicated on the validity of the rejection under 35 U.S.C. §103 given Fischer in view of Dapper. Because the rejection under 35 U.S.C. §103 given Fischer in view of Dapper has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Zehavi supplies that which is missing from Fischer and Dapper to render the independent claims unpatentable, this ground of rejection cannot be maintained.

Still further, the Examiner also failed to provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In a manner similar to the rejection of claim 1, the Examiner articulates the result of modifying the reference, to wit, to use a global timing schedule for the communications network to ensure the synchronization of all the devices in the network. The Examiner's conclusory statement is unaccompanied by evidence or reasoning and is entirely inadequate to support the rejection. *In re Sichert*, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977). Accordingly, the Examiner fails to meet the requirements set forth in MPEP §706.02(j). The Examiner is respectfully requested to withdraw the rejection.

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 842-8110 x 120 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: 5/19/10

Eamon J. Wall
Eamon J. Wall
Registration No. 39,414
Attorney for Applicant(s)

Wall & Tong, LLP
Attorneys at Law
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-842-8110
Facsimile: 732-842-8388